

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ORIGINAL
FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

APR 04 2006

WILLIAMS-RUSSELL AND JOHNSON,
INC.,

Plaintiff,

v.

PRINCE & ASSOCIATES, C. PRINCE &
ASSOCIATES CONSULTING, INC. and
CLOVIS L. PRINCE,

Defendants.

CIVIL ACTION

LUTHER D. THOMAS, Clerk
By *[Signature]* Deputy Clerk

FILE NO. **1:06-CV-0798**

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA

COME NOW, Defendants C. Prince & Associates Consulting, Inc. and Prince & Associates (hereinafter "P&A") and pursuant to 28 U.S.C. §1441(a) and 28 U.S.C. §1446, file this their Notice of Removal and show the Court as follows:

1. On February 16, 2006, Plaintiff Williams-Russell and Johnson, Inc. ("Plaintiff") filed Cause No. 2006-CV-112689, styled *Williams-Russell and Johnson, Inc. v. Prince & Associates, C. Prince & Associates Consulting, Inc. and Clovis L. Prince* in the Superior Court of Fulton County, Georgia (the "State Action"). P&A received notice of the State Action on March 6, 2006. On March 6, 2006, Plaintiff provided a Summons and Complaint to a P&A contractor. A copy of the Summons in the State Action is attached hereto as Exhibit "A." A copy of the Complaint purportedly served on P&A is attached hereto as Exhibit "B." No further proceedings have been had in the State Action.

2. Plaintiff is a corporation organized and existing under the laws of the State of Georgia. (Complaint, ¶1). Defendant C. Prince & Associates Consulting, Inc. is a Texas corporation with its principal place of business and corporate headquarters in Dallas, Texas. C. Prince & Associates Consulting, Inc. is not currently nor ever has been a resident or citizen of the State of Georgia. Defendant Prince and Associates is a division of C. Prince & Associates Consulting, Inc. and, therefore, also maintains its principal place of business and corporate headquarters in Dallas, Texas. Defendant Clovis L. Prince is also a resident of the State of Texas. Mr. Prince has not been served with a summons or the Complaint and has not made an appearance in this action.

3. The Complaint in the State Action alleges an amount in controversy that is in excess of \$75,000, exclusive of interest and costs. Indeed, Plaintiff alleges in the Complaint that it has suffered damages in the amount of \$679,300.45. (Complaint, ¶5, Prayer).

4. Accordingly, this action is within the original diversity jurisdiction of this Court pursuant to 28 U.S.C. §1332(a), and within the removal jurisdiction of this Court pursuant to 28 U.S.C. §1441(a), and is removable within the meaning of 28 U.S.C. §1441(a).

5. This Notice of Removal is filed within 30 days of the P&A's receipt of notice of Plaintiff's Complaint. Therefore, the dates on or before which P&A is required by the laws of the State of Georgia or the Georgia Civil Practice Act to answer or plead to Plaintiff's Complaint have not lapsed. The Summons and Complaint were purportedly served on a P&A through a contractor on March 6, 2006. Accordingly, none of the Defendants have been properly served with the Complaint in the State Action. Nonetheless, in accordance with the requirements of 28 U.S.C. §1446(b), this Notice of Removal is filed within 30 days after purported service of the Summons and Complaint on P&A.

6. P&A desires and is entitled to have this cause removed from the Superior Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division, such being the District where the State Action is pending.

7. Pursuant to the provisions of 28 U.S.C. § 1446, Defendants attach hereto as Exhibit "A" and Exhibit "B" and incorporate herein by reference copies of the following pleadings purportedly served upon Defendant P&A or otherwise filed in the State Action:

(a) Summons filed and issued by the Superior Court of Fulton County, Georgia; and

(b) The Complaint filed in the Superior Court of Fulton County, Georgia, on February 16, 2006.

8. Contemporaneously with the filing of this Notice of Removal, P&A is giving written Notice of Filing the Notice of Removal to all adverse parties, and are filing a copy of this Notice of Removal with the Clerk of the Superior Court of Fulton County, State of Georgia, as required by 28 U.S.C. §1446(d), and as stated in the Affidavit of Gregory R. Crochet attached hereto as Exhibit C.

9. Payment of the appropriate fees and costs for removal and docketing of this matter in the federal court, if any, is tendered with this notice.

10. Contemporaneously with the filing of this Notice of Removal, Defendants are giving written Notice of Filing the Notice of Removal to all adverse parties, and are filing a copy of this Notice of Removal with the Clerk of the Superior Court of Fulton County, State of Georgia, as required by 28 U.S.C. § 1446(d), and as stated in the Affidavit of Gregory R. Crochet attached hereto as Exhibit "C."

WHEREFORE, Defendants remove this action from the Superior Court of Fulton County, Georgia and pray that this Court accept jurisdiction of this action and henceforth that this action be placed on the docket of this Court for further proceedings as an action properly removed to it, the same as though this action had originally been instituted in this Court.

On this 4th day of April, 2006.

KUTAK ROCK LLP



Gregory R. Crochet
Georgia Bar No. 196650
Suite 2100
Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303-1731
(404) 222-4600 (Telephone)
(404) 222-4654 (Facsimile)

AND

MUNSCH HARDT KOPF & HARR, P.C.



Michael D. Pegues
Texas Bar No. 15730600
J. Scott Hogan
Texas Bar No. 24032425
3800 Lincoln Plaza
500 North Akard Street
Dallas, TX 75201-6659
(214) 855-7500 (Telephone)
(214) 978-7584 (Facsimile)

Attorneys for Defendants

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Williams-Buswell
and Johnson, Inc.

CIVIL ACTION
NUMBER

2006cv12689

PLAINTIFF

VS

Prince & Associates, et al.

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Terrence Lee Croft
King & Croft LLP
707 The Candler Bldg.
127 Peachtree St., NE
Atlanta GA 30303

an answer to the complaint which is herewith served upon you, within 30 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This _____ day of _____, 19 _____

Juanita Hicks
Clerk of Superior Court

By

[Signature]
Deputy Clerk

To Defendant upon whom this petition is served:

This copy of complaint and Summons was served upon you _____ 19 _____

Deputy Sheriff

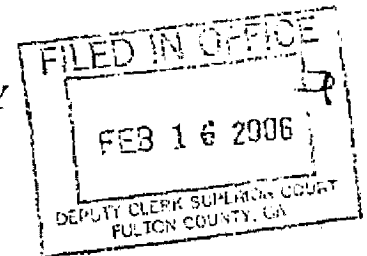
Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

EXHIBIT A

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



Williams-Russell and Johnson, Inc.,)
)
PLAINTIFF,)
)
V.)
)
Prince & Associates, C. Prince & Associates)
Consulting, Inc., and Clovis L. Prince,)
)
DEFENDANTS.)

Civil Action File

No. _____

COMPLAINT

COMES NOW Williams-Russell and Johnson, Inc. (hereinafter "WRJ" or "Plaintiff"), Plaintiff in the above-styled action, and for its causes of action against the Defendants, and states as follows:

1.

WRJ is a corporation organized and existing under the laws of the State of Georgia.

2.

Defendants maintain an office in the State of Georgia at 1025 Old Roswell Road, Suite 205, Roswell, Georgia 30076, and Defendants do business in this State and County; and Defendants are subject to the jurisdiction of this Court.

3.

Defendants contracted with WRJ to provide services as directed by Defendants. Defendants directed WRJ to perform such services. WRJ performed those services.

EXHIBIT B

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4.

WRJ has performed the services requested and met all conditions for payment by Defendant and billed Defendants for those services.

5.

Defendants made some payments to WRJ, but a balance of \$679,300.45 remains past due.

6.

Demand has been made upon Defendants for the balance due, and Defendants have not denied the account stated, but Defendants have failed and refused to pay the balance due.

7.

The Defendants have failed to act in good faith and have also failed to deal fairly in upholding their obligations to WRJ and have been stubbornly litigious and caused WRJ unnecessary trouble and expense, all in violation of O.C.G.A. § 13-6-11.

8.

The retention of the monies owed to WRJ by Defendants is unjust and inequitable.

9.

As a result of the actions of Defendants in retaining the monies owed and in not paying WRJ, WRJ has been damaged and the Defendants have been unjustly enriched.

10.

When contracting with WRJ, Defendants represented that WRJ would receive payment for the services provided.

EXHIBIT B
2 of 4

11.

The Defendants knew those representations were not true when made and that they did not intend to fulfill those representations.

12.

WRJ reasonably relied upon the representations and statements of the Defendants to its detriment.

13.

As a direct and proximate result of Defendants' fraud and misrepresentations committed upon WRJ, WRJ has been injured and damaged.

14.

As a consequence of the intentional and wrongful acts of Defendants, WRJ is entitled to recover punitive damages from Defendants.

15.

The retention by the Defendants of the proceeds received for the work performed by WRJ, a portion of which belongs to WRJ, gives rise to an equitable lien against Defendants' assets for the benefit of WRJ.

WHEREFORE, WRJ prays that summonses issue and process be served upon Defendants and for judgment against the Defendants, jointly and severally, as follows:

- a. for damages in the amount of \$679,300.45 with interest accruing at the rate of eighteen percent per annum from the date due;
- b. for punitive damages;
- c. for an equitable lien upon the Defendants' assets in an amount sufficient to protect WRJ;

EXHIBIT B
3064

- d. for recovery of costs and attorneys' fees to the extent permitted by law; and,
for such other and further relief as the Court may deem meet and just.

Respectfully submitted this 15 day of February, 2006.

KING & CROFT LLP

By: 

Terrence Lee Croft
Georgia Bar No. 197100
707 The Candler Building
127 Peachtree Street
Atlanta, Georgia 30303
Tel: 404/577-8400
Fax: 404/577-8401
Email: tlc@king-croft.com

EXHIBIT B

404

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAMS-RUSSELL AND JOHNSON,
INC.,

Plaintiff,

v.

PRINCE & ASSOCIATES, C. PRINCE &
ASSOCIATES CONSULTING, INC. and
CLOVIS L. PRINCE,

Defendants.

CIVIL ACTION

FILE NO. _____

AFFIDAVIT OF FILING AND SERVICE

STATE OF GEORGIA
COUNTY OF FULTON

COMES NOW the undersigned attorney for the Defendants who, being duly sworn,
deposes and states as follows:

1.

The undersigned is over the age of eighteen (18) years, is not suffering under any legal
disability, and is otherwise competent to make this Affidavit.

2.

The undersigned is an attorney for Defendants in this action, and states that as such
attorney he has caused to be filed a copy of the Notice of Removal in this action with the Clerk
of the Superior Court of Fulton County, State of Georgia.


3.

The undersigned served a copy of the Notice of Filing Notice of Removal, to which the
Notice of Removal is attached, upon Terrence Lee Croft, Esq., who is the attorney of record for

Williams-Russell and Johnson, Inc., Plaintiff in the above cause, by depositing in the United States mail on April 4, 2006, true copies of the Notice of Filing Notice of Removal, and the Notice of Removal, in an envelope securely sealed, and sufficiently stamped, and properly addressed to Terrence Lee Croft, Esq., King & Croft LLP, 707 The Candler Building, 127 Peachtree Street, N.E., Atlanta, Georgia 30303, the true and correct address of the attorney for Plaintiff.

Dated the 4th day of April, 2006.

Sworn to and subscribed before me
this 4th day of April, 2006.

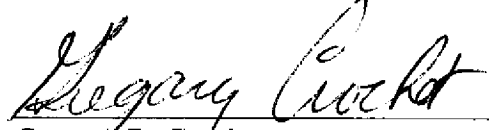


Notary Public
My Commission Expires: 9-19-2008



Respectfully submitted,

KUTAK ROCK LLP

By _____

Gregory R. Crochet
Georgia Bar No. 196650
Suite 2100
Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303-1731
(404) 222-4600 (Telephone)
(404) 222-4654 (Facsimile)

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the within and foregoing **AFFIDAVIT OF FILING AND SERVICE** was served upon all parties or their counsel of record by placing a copy of same in the United States Mail in an envelope with adequate postage affixed thereon, properly addressed as follows:

Terrence Lee Croft, Esq.
King & Croft LLP
707 The Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30303

This the 4TH day of April, 2006.



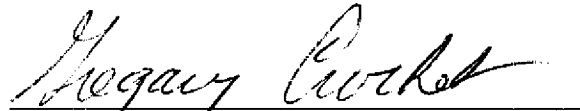
Gregory R. Crochet

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Removal was served on the attorney of record by placing a copy of same in the United States Mail in an envelope with adequate postage affixed thereon, property addressed as follows:

Terrence Lee Croft, Esq.
King & Croft LLP
707 The Candler Building
127 Peachtree Street
Atlanta, GA 30303

This the 4th day of April, 2006.



Gregory R. Crochet